



**House
Legislative
Analysis
Section**

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STATE PRISONERS: REIMBURSE COUNTY COSTS

Senate Bill 106 (Substitute H-1) **RECEIVED**
Senate Bills 167 and 168 as introduced
First Analysis (10-15-87) **OCT 22 1987**

Sponsor: Sen. Nick Smith Mich. State Law Library
First Senate Committee: Criminal Justice, Urban
Affairs, and Economic Development
Second Senate Committee: Appropriations
House Committee: Corrections

THE APPARENT PROBLEM:

Three separate acts allow prosecutors in counties where correctional facilities are located to bill the Department of Corrections (DOC) for expenses incurred in prosecuting new felonies charged to incarcerated or escaped prisoners. Reimbursements are limited to \$300 for each case, and the maximum allowable hourly rate is left to the discretion of the DOC, which has kept this rate at \$25 per hour since 1978. In contrast, court-appointed defense attorneys for state prisoners do not labor under such statutory restrictions: prisoner defense counsel fees are limited locally by judges, as they are for other court-appointed defense attorneys, and the DOC pays the sum allowed by the judge. Many believe that a more equitable situation for prosecutors would be an increase in the per-case limit with exemptions for extraordinarily expensive cases, coupled with provisions tying the rate of reimbursement to that paid locally for defense counsel.

THE CONTENT OF THE BILL:

Senate Bill 106 (H-1) would amend Public Act 16 of 1978 to provide, in cases involving incarcerated or escaped state prisoners for the reimbursement by the state of prosecuting attorney's fees based on actual time spent in prosecuting cases and calculated at a rate equal to 70 percent of the hourly rate or flat fee paid to court-appointed defense attorneys. There would be a limit, however, of \$1,000 per case unless the case involved 12 or more hours of actual trial time or the case involved a felony offense for which the maximum punishment is life imprisonment. The bill would also incorporate provisions requiring the state to reimburse a county for reasonable and actual costs incurred for juror's fees, witness fees, fees of court-appointed defense attorneys, and transcript fees. These provisions are now found either in the Code of Criminal Procedure (for new felony cases) or Public Act 232 of 1953 (for cases involving escape from state custody).

Under Senate Bill 106 (H-1), a county would submit its itemized costs to the Department of Management and Budget, which would make the conclusive determination of the reasonableness of the costs. (This role is now played by the Department of Corrections.)

Senate Bill 106 would also increase the reimbursement to counties for state prisoners held in county jails from \$20 per day to \$35 per day. (The reimbursement does not apply in cases where state prisoners are being held awaiting prosecution on new felony charges.)

Senate Bill 167 would make corresponding amendments to Public Act 232 of 1953 to remove reimbursement provisions. Senate Bill 168 would remove reimbursement provisions from the Code of Criminal Procedure. Neither of the bills could take effect unless Senate Bill 106 were enacted.

Senate Bill 106: MCL 800.452 and 800.454
Senate Bill 167: MCL 791.265a
Senate Bill 168: MCL 768.7

HOUSE COMMITTEE ACTION:

The House Corrections Committee adopted a substitute for Senate Bill 106. As passed by the Senate, the bill established a procedure whereby a circuit court would submit requests for reimbursement to the state court administrator. This version had no limit on prosecution costs and specified that fees for prosecuting attorneys and court-appointed defense attorneys would have to be similar to fees paid to attorneys representing indigent defendants. The House substitute reimburses prosecutors at 70 percent of the rate of defense attorneys and places a \$1,000 cap on reimbursements except in special cases. Counties (not the circuit courts) would submit bills to the Department of Management and Budget (not the state court administrator).

FISCAL IMPLICATIONS:

There is no specific information at present on the House substitute. The Senate Fiscal Agency said the Senate-passed measure would cost between \$386,000 and \$895,000 per year. The House substitute would cost less because it contemplates lower reimbursements for prosecutors.

ARGUMENTS:

For:

Senate Bill 106 would provide for fairer reimbursement to counties for their costs in prosecuting and incarcerating state prisoners. Since inmates of the state correctional system are the responsibility of the state, the state should pay more of the costs these prisoners present to counties. The bill would help to ensure that the state does so, especially in costly prosecutions such as those for crimes punishable by life in prison. Reimbursement to prosecutors is at present limited to \$300 per case, which forces counties to absorb costs over that amount.

The current rate of reimbursement to county jails for housing escaped state prisoners also is much too low. A recent study placed the average daily cost of housing for Michigan county jails at \$39.74, while the current maximum is only \$20. The bill would raise the maximum rate to \$35 and help counties to defray those costs.

Response: The study of housing costs was methodologically questionable. Some counties included all kinds of ancillary costs such as medical and dental treatment that may not have been necessary and overhead costs that were not incurred as a result of housing state prisoners.

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For:

The bills would consolidate into one act reimbursement provisions now found in three different acts.

POSITIONS:

The Department of Corrections supports the bills.
(10-13-87)

The Department of Management and Budget supports the bills. (10-13-87)

The Michigan Corrections Organization supports the bills.
(10-13-87)